

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

M.D., by her next friend, Sarah R. Stukenberg, *et al.*,

Plaintiffs,

V.

GREG ABBOTT, in his official capacity as Governor of the State of Texas,
et al.,

Defendants.

Civil Action No. 2:11-CV-00084

**DEFENDANTS' OBJECTIONS TO THE MONITORS' REPORT
TITLED "MONITORS' SUPPLEMENTAL UPDATE TO THE
COURT REGARDING REMEDIAL ORDERS 3, 7 AND 8 AND
HHSC PROVIDER INVESTIGATIONS"**

Defendants respectfully submit the following objections to the Monitors’ report titled “Monitors’ Supplemental Update to the Court Regarding Remedial Orders 3, 7, and 8 and HHSC Provider Investigations.” Dkt. 1442; Fed. R. Civ. P. 53(f)(2).

The Monitors' report reviews investigations conducted by HHSC's Provider Investigations (PI) division. The Monitors previously filed a report about HHSC Provider Investigations, Dkt. 1412, and defendants filed objections. Dkt. 1418. In their first PI report, the Monitors described 28 investigations which they determined were either assigned the wrong disposition or were deficiently conducted. Dkt. 1418, at 2. Those 28 investigations involved 9 unique PMC children—or approximately 0.01 percent of the PMC class. Dkt. 1418, at 2.

In this second PI report, the Monitors described 10 additional PI investigations that they determined were either assigned the wrong disposition or were deficiently conducted. Dkt. 1442, at 10–21.¹ Four of the children involved in the 10 recounted investigations were previously identified in the Monitors’ first PI report, meaning that the total number of unique PMC children described in the Monitors’ two PI reports is 15—or approximately 0.02 percent of the PMC class. Dkt. 1442, at 9; Dkt. 1418, at 2.

Defendants are committed to safeguarding the children in their care and working with the Monitors to demonstrate substantial compliance with the Court’s remedial orders. Defendants also understand the importance of complete and accurate reports from the Monitors in that process and respectfully submit the following objections to the Monitors’ report.

OBJECTIONS

- Page 4: “[T]he remaining four closed investigations were identified as occurring in an Adult Foster Care Licensed Intermediate Care Facility (ICF/IID)”
 - **Objection:** Defendants respectfully clarify that licensed ICF/IID is not “Adult Foster Care.”
- Page 10 (Child D): “Due to untimely interviews with key individuals, the investigator did not gather sufficient information to determine whether a staff member(s) adequately supervised the child when he eloped twice from the facility on the same date.”
 - **Objection:** Defendants respectfully disagree with the Monitors’ view that the investigator didn’t gather sufficient information to support the disposition of “unconfirmed” neglect. The investigator’s report includes

¹ Like their first PI report, the Monitors’ second PI report doesn’t indicate whether the Monitors randomly or specifically selected the investigations that they reviewed.

a time sheet showing which two staff members were on duty on the date of the intake report, February 27, 2023. The investigator interviewed both of those staff members. Law enforcement also stated that staff members were with the child both times the child eloped and were trying to intervene and prevent the child from eloping. Finally, when the home supervisor arrived on scene, she couldn't remember which staff member called her—but stated that the staff member who was present with the child was trying to gain cooperation to prevent the child from eloping. Under these circumstances, an “unconfirmed” disposition was appropriate. *See* 26 Tex. Admin. Code § 711.421 (“preponderance of credible evidence to support that abuse, neglect, or exploitation did not occur”).

- Page 16 (Child L): “During the child’s phone interviews, the child remained consistent in his allegation that Staff 1 hit him once with a dustpan in the garage and hit him with a closed fist in response to the child ‘acting up’ one night.”
 - **Objection:** Defendants respectfully disagree with the Monitors’ view that the child’s testimony remained consistent. The child’s testimony contained contradictory statements, including denying and affirming the allegations.

Date: December 1, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 1, 2023, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court using the electronic case filing system, which automatically provided notice to all attorneys of record.

/s/ Allyson N. Ho
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